(3) in 1991, 1992, and 1993, the reduction of the maximum tariff to 40 percent, 30 percent, and 20 percent respectively, with the ultimate goal of only two tariff rates;
(4) in 1989, the reduction of nontariff charges for all manufactured products to a maximum of 25 percent; and
(5) also in 1989, and subject to several exceptions, the elimination of exonerations from customs duties for manufactured goods.

Customs reform for agricultural imports is to be delayed until March 1991.

In accordance with a further mandate contained in the decree, the Venezuelan Government has formally requested accession to the General Agreement on Tariffs and Trade (GATT). Venezuela is the last major Latin American country to seek membership in GATT.

United Kingdom*

I. Government Proposals for Reform of the English Legal System

A. Introduction

In July 1989 the Lord Chancellor, Lord Mackay of Clashfern, published a White Paper, "Legal Services: a framework for the future" (Cm 740), that set out the Government's proposals for legislation to reform the English legal system. A summary of the White Paper is given below; detailed legislation giving effect to the proposed changes is likely to be before Parliament in 1990. The White Paper follows the publication in January 1989 of three consultative green papers: "The Work and Organization of the Legal Profession" (Cm 570); "Contingency Fees" (Cm 571); and "Conveyancing by Authorized Practitioners" (Cm 572). The Government's original proposals in the Green Papers were the subject of intense lobbying by various interest groups, including an unprecedented publicity campaign by the English bar, which strongly opposed the extension of rights of advocacy to solicitors. Hostile views were also collectively expressed by judges, who feared that the independence of the judiciary was under threat. Broadly speaking, the White Paper has retained the main thrust of the original proposals that reflected the Government's intention to provide for greater competition in the provision of legal services to the general public.

*Prepared by Clifford Chance, London.

B. Summary of White Paper

1. *General Principles*

The following statutory objectives would be defined in the legislation:

(i) to lay down standards of education and training in the provision of services in advocacy or the conduct of litigation that ensure that those who offer such services to the public are competent to do so;

(ii) to maintain the standards of conduct in advocacy and the conduct of litigation that are required in the interests of proper and efficient administration of justice; and

(iii) to ensure that there are no obstacles to access to justice and no restrictions that would inhibit a client's choice of how to obtain legal services, imposed on those qualified to provide legal services or on what those who are qualified may do.

An independent Statutory Advisory Committee on education and conduct will be set up to give advice on how the above objectives can be achieved. Its prime role will be to advise all bodies authorized to grant their members right of audience, the right to conduct litigation, or the right to prepare probate documents. It will also advise the Lord Chancellor and the judiciary on the arrangements for ensuring appropriate standards of competence and conduct in the provision of legal services. According to the proposal, the Advisory Committee will have fifteen members comprised of a senior judge as chairman, two practicing barristers, two practicing solicitors, two academic lawyers, and eight lay members. The proposal also includes improvements in the procedure for investigating complaints from members of the public about legal services. A new office of Legal Services Ombudsman will be created. The new Ombudsman will have the authority to examine the way in which complaints against legal practitioners are investigated by the professional bodies and to investigate such complaints personally, when appropriate. The Ombudsman will have the power to recommend the payment of compensation in most cases.

2. *Rights of Audience*

A single statutory framework will be established allowing both the Law Society and the Bar to grant rights of audience to "suitably qualified" members in all courts. Existing rights of audience for barristers and solicitors should be maintained, but other professions should be considered for eligibility as advocates in certain courts. The new system will allow solicitors to qualify for rights of audience in all courts and for appointment as Queen's Counsel. Any changes to the existing rules governing the competence and conduct of advocates should be agreed to by the Lord Chancellor and the senior judges. When considering any such changes, the Lord Chancellor, professional bodies, and the judiciary should consider the Advisory Committee's advice.

3. *Judicial Office*

"Suitably qualified" solicitors will be eligible to become High Court and appellate judges.

4. *Multidisciplinary and Multinational Partnerships*

The current statutory restrictions on solicitors forming partnerships with members of other professions and with foreign lawyers will be removed. The matter will be left entirely to the relevant professional bodies to decide on the formation of multidisciplinary and multinational partnerships.

5. *Contingency Fees*

Lawyers conducting civil litigation will be permitted to agree with their clients to charge fees that are conditional upon their winning the case, in accordance with the speculative basis already permitted in Scotland. In addition, in the event of a successful action, a "specified moderate percentage uplift" may be permitted. The U.S. system of charging a substantial percentage of any damages recovered will not be permitted, however. The present rule whereby the loser pays the winner's legal costs will be retained.

6. *Conveyancing*

Building societies, banks, and other authorized practitioners will be permitted to offer conveyancing services to members of the public who borrow money from them. These services will be subject to certain safeguards; in particular:

(i) there will be a general ban on offering conveyancing services in situations in which conflicts of interest are regular or inescapable;
(ii) the qualified conveyancer undertaking the transaction should offer the client a personal interview to ensure no conflict arises and identify any areas in which independent advice might be desirable;
(iii) authorized practitioners must certify that they are not cross-subsidizing conveyancing services from their other activities and disclose financial benefits from all aspects of the transactions; and
(iv) making the provision of one service conditional on taking others will be prohibited.

7. *Probate*

Trust corporations and other groups regarded as "suitably qualified" by the Lord Chancellor will be allowed to prepare applications for probate.

C. Implications for the Consumer of Legal Services

The White Paper's proposals are principally designed to improve the cost-effectiveness of the English legal system to the individual consumer. It is likely that banks and building societies will take advantage of the opportunities to

provide conveyancing and probate services and that the small firms and sole practitioners in the high street will suffer severe competition.

The breaking of the bar's monopoly of rights of audience in the higher courts has potentially far-reaching implications for the organization of the English legal profession. It remains to be seen, however, what requirements will be imposed upon solicitors wishing to qualify as advocates and how many will choose to practice advocacy. For the foreseeable future the existence of an independent specialized bar of advocates seems secure. The fears that the original Green Paper provoked, that "fusion" of the bar with solicitors would take place, have diminished. While it is possible that larger firms may develop some in-house advocacy expertise as part of their litigation practice, the likelihood is that smaller firms of solicitors will continue to use barristers for advocacy in the higher courts. It appears that barristers will continue to practice as individuals and their own professional body will not permit them to form partnerships with other barristers or solicitors.

The removal of the statutory prohibition against multidisciplinary and multinational partnerships does not necessarily mean that either form of professional organization will be permitted by the Law Society. Judging by its present attitude, it is more likely that the Law Society will permit partnerships between English solicitors and foreign lawyers rather than partnerships between English solicitors and other professions, such as chartered surveyors or accountants. Nevertheless, such changes lie some distance in the future.

The proposal for contingency fees on the Scottish speculative action basis (seen by some of the Government's critics as a cheap alternative to adequate funding of the civil Legal Aid system) may lead to an expansion of personal injury, medical negligence, and product liability litigation, but only if sufficient solicitors are willing to take the financial risk involved. With the exception of actions for libel and slander, however, damages are assessed by a judge and not a jury, and successful lawyers will not be permitted to take a large share of any damages. For these reasons, even if a "Plaintiffs' bar" does develop, a dramatic increase in litigation following the example of the United States is unlikely.

II. Company

A. The Companies Bill

This Bill is expected to receive Royal Assent in November 1989 and come into force in early 1990. The following are the most important matters dealt with.

1. *Consolidated Accounts*

Part I of the Bill implements the Seventh EC Company Law Directive, which sets out the circumstances and manner in which consolidated accounts must be prepared and published. This involves the important concept of "subsidiary

undertaking," which is broader than the existing concept of "subsidiary" under English law.

2. *Regulation of Auditors*

The Eighth EC Company Law Directive lays down minimum requirements for the education and training of auditors. It obliges Member States to ensure that company audits are carried out with integrity and that there are appropriate safeguards in national law to protect the auditors' independence. Part II of the Bill implements these requirements.

3. *Powers of Investigation*

Part III of the Bill implements the recommendations of the DTI Review of Investigation Powers announced by the Secretary of State on May 11, 1988.

4. *Other Amendments of Company Law*

These other amendments include:

(i) abolition of the "ultra vires" doctrine;
(ii) a new deregulatory regime for private companies;
(iii) abolition of the requirement to execute documents by seal;
(iv) abolition of the rule in *Houldsworth's* case that a subscriber for shares cannot bring a claim in damages against the company arising out of the acquisition of shares unless he also rescinds the contract; and
(v) amendment of the level at which persons may be required to disclose their interest in shares to the company concerned from 5 percent of the company's relevant share capital to 3 percent. (In this connection, The Stock Exchange announced in May 1989 changes to the listing rules to permit listed companies to impose tougher sanctions for noncompliance with notices under section 212 of the Companies Act 1985.)

5. *Mergers*

Part VI implements the proposal in the 1988 mergers policy paper for a system of voluntary pre-notification of mergers.

6. *Financial Markets and Insolvency*

In order to remove the uncertainty as to how insolvency law applies to the procedures used by financial markets to prevent a domino effect on other members when a member defaults, part VII of the Bill provides that the market's procedures take precedence.

7. *Amendments to the Financial Services Act 1986*

Part I of the Financial Services Act (Regulation of Investment Business) is amended to empower the Secretary of State to issue "statements of principle with respect to the conduct and financial standing expected of persons authorized

to carry on investment business." This amendment is in pursuance of the policy of radically simplifying the new regulatory regime for the securities industry, and will be implemented by the Securities and Investments Board.

8. *Transfer of Securities*

Part IX of the Bill allows title to securities to be evidenced and transferred without a written instrument.

III. Commercial

A. Proposed Amendments to U.K. Restrictive Trade Practices Legislation

In 1986, the U.K. Government began a review of all aspects of competition policy. This has resulted most recently in the recommendations for a complete overhaul of the current Restrictive Trade Practices Legislation (mainly the Restrictive Trade Practices Act, 1976). Initial proposals were published in March 1988 in a Green Paper, "Review of Restrictive Trade Practices Policy" (Cm 331), and largely endorsed in the White Paper, "Opening Markets: New Policy in Restrictive Trade Practices" (Cm 727), which was published on July 18, 1989.

B. Current Law

The current substantive legislation is found in the Restrictive Trade Practices Act, 1976. (For the full picture, see the Restrictive Trade Practices Act 1977 and various ministerial orders made under the 1976 Act.) The 1976 Act requires that unless specifically exempted all agreements between two or more persons carrying on business in the United Kingdom in the production or supply of goods and under which two or more parties accept certain restrictions must be registered. The relevant restrictions include prices to be charged, terms or conditions on which goods will be supplied, and quantities or descriptions of goods to be supplied. Similar provisions apply to agreements between producers and suppliers who agree to exchange information and to agreements between suppliers of services.

Once registered, the agreement must be referred by the Director General of Fair Trading (DGFT) to the Restrictive Practices Court (RPC) which decides whether the restrictions are contrary to the public interest. If they are, the restrictions are void. Generally, few agreements are the subject of court proceedings. The DGFT takes no action if he considers the agreement appropriate in light of any EC decision or if the restrictions that render the agreement registrable have been removed or are no longer effective. If the restrictions are insignificant, the Secretary of State for Trade and Industry issues a direction under section 21(2) of the RTPA discharging the DGFT from his duty to refer the agreement to the RPC.

The consequences of registration are obvious. With certain exceptions, the existence and conditions of the agreement are available to third parties from the register, which is open to public inspection. In case of nonregistration all restrictions are void, and it is unlawful for a party to give effect to them. Third parties affected may bring proceedings for breach of the statutory duty. On the DGFT's application, the RPC may issue cease and desist orders restraining parties from giving effect to restrictions in the agreement.

C. Deficiencies in Current Legislation

The Green Paper identified the inadequacies of the current system under the following headings:

1. *Lack of Bite against Damaging Agreements*

The intended deterrent effect of the present legislation fails in several important respects. The powers of investigation invested in the DGFT are inadequate, as are the penalties for ignoring the law. Firms operating registrable but unregistered agreements are merely subject to cease and desist orders. Fines for breach of these orders are not heavy enough.

2. *Catching Trivia*

Because the legislation looks at the form of the agreement rather than at its effect or purpose, a large number of agreements fall within the RTPA and must be dealt with even though they do not significantly restrict competition.

3. *Scope for Avoidance*

For the same reason, more seriously anticompetitive agreements can avoid the need for registration by careful drafting so that only one party accepts restrictions.

4. *Too Many Exceptions*

A large number of industry specific exemptions exist, and new ones are created without provisions for review.

5. *Complexity*

The form-based character of the legislation and its consequential indiscriminate coverage make it very difficult to understand.

6. *Burdensome and Costly*

Registration of so many agreements is time-consuming and costly. The DGFT must look into all agreements, and they must all be registered, even where a section 21(2) direction is possible.

In short, the Green Paper concluded that the current legislation was a sledge hammer, and one that kept missing the nut.

D. Proposed Changes

1. *Substantive Proposals*

The Government has decided that new legislation is required to replace completely the RTPA. This new law will be directed at the purpose and effect of agreements, not their form. It will prohibit agreements or concerted practices that have the object or effect of restricting or distorting competition in the United Kingdom or in a part of the United Kingdom. As is obvious from this description, the new law will have much in common with article 85 of the EEC Treaty—a feature that the Government considers favorable in view of the approach of the Single European Market after 1992.

Prohibited restrictions will be void and unenforceable, and all parties to the agreement will be liable for penalties. Directors and managers who negotiate and/or implement the agreement will be subject to fines, and third parties will be able to sue businesses in private actions for damages.

Agreements that are anticompetitive but that produce technical or economic benefits that would not otherwise be obtainable may be exempted. There will be block exemptions to cover categories of agreement that would qualify for individual exemption and an arrangement to ensure that agreements that are exempt under EC law are also exempt in the United Kingdom. It will also be possible to obtain exemptions for individual agreements where the economic and technical benefits are widely shared and outweigh the agreement's restrictive effects. Applicants for exemption will be measured according to the economic and technical benefits. The test will be based on article 85(3) of the EEC Treaty, but will be reworded to cover rights of access to land and services. The parties to an exempted agreement will be under no liability to third-party proceedings for damages or penalties.

There will be periodic reviews of the exemptions, which will therefore be limited in duration. It will be possible on review for the exemption to be revoked or amended or, in the case of block exemptions, withdrawn from an agreement. The DGFT will issue guidance on exemption policy and will recommend block exemptions to the Secretary of State.

Except in cases of price fixing, de minimus provisions will apply to agreements where the parties have combined turnover below £5m or, in the case of vertical agreements, where no party has a U.K. turnover of more than £30m. Parties to de minimus agreements will not be liable to penalties, but the risk of liability in civil actions for damages will remain.

2. *Institutional Changes*

The DGFT will be responsible for the investigation of anticompetitive practices and initial conclusions about prohibition. It is proposed, however, that

up to ten extra part-time MMC members will be appointed to sit as a Restrictive Trade Practices Tribunal. They will sit in panels of three, hearing disputed conclusions and decisions of the DGFT and imposing penalties where appropriate. They will also be consulted by the DGFT on planned block exemptions.

Appeals from decisions of the tribunal will go to the High Court on a point of law, and will be heard on grounds that the tribunal's decision was not justified by the evidence and on the level of a penalty. The RPC will cease to exist.

3. *Penalties*

Parties to illegal agreements will be liable for civil penalties of up to 10 percent of their U.K. turnover or £250,000, whichever is higher, up to a maximum of £1m. Directors and managers will face fines of up to £100,000. In addition, the DGFT will be able to apply to the High Court for an order directing a business or individual not to operate a prohibited agreement, the breach of which will constitute contempt of court.

4. *Investigation*

The DGFT's powers to enter, search for, and seize evidence are greatly expanded. Previously the DGFT required firm evidence of anticompetitive behavior before he could take any action. He will now be able to "investigate on reasonable suspicion." Usually, the DGFT will give notice of an intended search. Where the notice is not complied with, however, or where the DGFT suspects that evidence may be interfered with if notice is given, he will be able to obtain a warrant from a magistrate authorizing him to enter premises, by force if necessary, and to inspect and take copies of documents. It will be a criminal offense to obstruct the DGFT or deliberately to supply to him or to the tribunal misleading or false information.

5. *New Legislation*

The White Paper states that "new legislation should be introduced . . . as soon as parliamentary time permits." This may be during the 1989-1990 session, though this is not yet certain. It remains to be seen whether the new legislation will, as the Government hopes, provide "an effective deterrent against price fixing, market sharing and other agreements which prevent the full operation of competition in an open market."